IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

WP(C).No. 33670 OF 2004(G)

PETITIONER:

K.BALAN NAIR,
RETIRED FOREST GUARD, KODAYAMPARAMBATH HOUSE,
CHEMMAD, THIRURANGADI P.O., MALAPPURAM DISTRICT.

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY,
DEPARTMENT OF FINANCE, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE CONSERVATOR OF FORESTS,
OLAVAKODE CIRCLE, PALAKKAD DISTRICT.

3. THE DIVISIONAL FOREST OFFICER,
SOUTH WAYANAD DIVISION, KALPETTA.

4. THE ACCOUNTANT GENERAL (A & E),
INDIAN AUDITS AND ACCOUNTS DEPARTMENT, KERALA,
THIRUVANANTHAPURAM.

GOVERNMENT PLEADER SRI. M.P.PRAKASH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) 33670/2004

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1	TRUE COPY OF THE ORDER DATED 21.7.1994 OF THE 3RD RESPONDENT.
EXT.P2	TRUE COPY OF LETTER DATED 9.10.1997 FROM THE 3RD RESPONDENT TO THE 4TH RESPONDENT.
EXT.P3	TRUE COPY OF LETTER NO. PR10/PENA/5/AL/94-95/1404 DATED 25.3.1998 FROM THE OFFICE OF THE 4TH RESPONDENT TO THE 3RD RESPONDENT.
EXT.P4	TRUE COPY OF ORDER NO. 101745/PWC.A1/99/FIN. DATED 18.7.2000 FROM THE 1ST RESPONDENT TO THE CONSERVATOR OF FORESTS, KOZHIKODE.
EXT.P5	TRUE COPY OF LETTER NO. E1-4806/92 DATED 31.8.2000 FROM THE 3RD RESPONDENT TO THE 4TH RESPONDENT.
EXT.P6	TRUE COPY OF THE REPRESENTATION DATED 21.1.2004 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
EXT.P7	TRUE COPY OF LETTER NO. A3.2334/89 DATED 6.2.2004 FROM THE 2ND RESPONDENT TO THE PETITIONER.
EXT.P8	TRUE COPY OF LETTER NO. E1-4806-02 DATED 30.12.2003 ISSUED BY THE 3RD RESPONDENT TO THE 4TH RESPONDENT.

RESPONDENTS' EXHIBITS:

NIL.

// TRUE COPY //

P.S. TO JUDGE.

knc/-

P.R. RAMAN, J.

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DATED THIS, THE 29TH DAY OF NOVEMBER, 2006.

J U D G M E N T

Petitioner retired from service as a Forest Guard on 31.7.1992. By order dated 28.4.1992 a penalty was imposed on him with-holding of two increments without cumulative effect. The next increment before his retirement became due on 1.7.1992. Because of the order of punishment imposed, he did not receive the increment which fell due on 1.7.1992 and thus, suffered punishment for one month before he actually retired. But since the punishment could not be fully effected by actual recovery of the amount because of his retirement in the meantime, the mandatory value of the possible loss was recovered from his DCRG and an amount of Rs. 1,400/- was recovered. His pension was fixed reckoning the salary without the increment benefits. Subsequently, revised pension papers were submitted for sanction by the Accounts Department as evidenced by Ext.P2. But by Ext.P3 dated 25.3.1998 the Accounts Officer wrote to inform the Divisional Forest Officer that since the petitioner was not in service on the

expiry of the bar period the increments accrued during the bar cannot be released to him. Reference was also made to Note 4 to Rule 63, Part III of the Kerala Service Rules and the revision sought for was turned down accordingly. Petitioner sought for review of the pension after reckoning the increments without cumulative effect at least notionally and filed a petition dated 16.11.1999 with reference to which Ext.P4 order was issued by the Government dated 18.7.2000 allowing his request and stating that appropriate directions are issued in this regard for fixation of the increment notionally which fell due on 1.7.1992 and to release all allied pensionary benefits on that basis. Ext.P4(a) communication from the Principal Secretary, Finance Department would also show that the Government itself has taken the view that the monetary value equivalent to two increments barred from the DCRG and recovered, by itself is a punishment equal to barring of increments without cumulative effect and so if the increment due on 1.7.1992 was not sanctioned or counted, it will be equivalent to another punishment on the same charge. Therefore, there is no objection in granting the increment notionally due on 1.7.1992 and releasing all allied pensionary benefits on the basis of that average emoluments. But in spite of these orders Exts.P4 and P4(a). since pension was not revised, possibly because of the audit objection raised in Ext.P3, no steps were taken for

reckoning the increments which fell due on 1.7.1992 also for recalculating the pensionary benefits. It is in these circumstances, that the petitioner has approached this Court seeking appropriate relief.

2. In the counter affidavit filed by the Government, the stand taken by them is that Exts.P4 and P4(a) are issued under a mistaken impression that the petitioner would be otherwise entitled to reckon the increment fell due on 1.7.92. But according to them, the correct legal position is as prescribed in Note 4 to Rule 63, Part III, K.S.R. as per which only the actual amounts drawn by the petitioner could be reckoned for the purpose of calculating the pension. In this case, since the petitioner could not receive the increment which fell due on 1.7.1992 and the actual pay drawn by him could only be less the increment fell due on 1.7.1992 because of the punishment imposed. The learned Government Pleader also placed reliance on the decision reported in **State of Kerala v. Ranganathan (**1997 (2) KLT 121).

3. The contention of the petitioner is that since the monetary value equivalent to the loss that would have been sustained by the Government on account of the retirement of the petitioner before suffering the punishment having been recovered, he is entitled to have the notional fixation of the last drawn pay reckoning the increment which fell due prior to his retirement

namely, 1.7.1992. He placed reliance on the decision of this Court in **Balan v. State of Kerala (** 2002(3) KLT, S.N. Page 24).

4. Heard both sides. In the decision of the Division Bench of this Court in **Renganathan's** case (1997(2) KLT 121) the question came up for consideration was whether the punishment imposed on the petitioner therein of barring of increments without cumulative effect is a major penalty or a minor penalty. The learned Single Judge before whom the matter originally came up for consideration took the view that before actual sufferings of the punishment, petitioner retired and therefore it will have the cumulative effect and hence the punishment imposed should be held as a major penalty and the procedure that was followed being one for imposing a minor penalty, the whole proceedings stands vitiated. It is the appeal therefrom that came up for consideration before the Division Bench in the said decision. The Division Bench, on referring to Rule 15 & 17(b) of the Kerala Police Departmental Inquiries, Punishment and Appeal Rules (Kerala) 1958, which specifically provides that with-holding of increments is a minor penalty, did not agree with the learned Single Judge; but did not go into the question as to whether imposition of penalty will have any cumulative effect or not because of the retirement of the incumbent before suffering the penalty. On the other hand, in **Balan's** Case (2002(3) KLT

SN Page 24), a learned Single Judge of this Court appears to have taken the view that since punishment that had been imposed on the petitioner had not the effect of postponement of future increments, at the end of the prescribed period of each punishment, at least notional fixation would have been necessary as otherwise it would have automatically transformed the punishment to a nature of a cumulative bar.'.

5. Coming to the facts of the present case as already observed, petitioner actually suffered a portion of the punishment because he did not receive the increment which fell due on 1.7.1992. For the remaining period, however, monetary value equivalent thereto was recovered from him as permitted under Note 3 appended to Rule 11 of the KCS (CCA) Rules. If he has to suffer the punishment, the increment would stand restored on completion the expiry of the period of one year when the second increment also became due. In this case, since the monetary value was recovered in advance, petitioner had already suffered the punishment even though he retired from service. But the increment which fell due on 1.7.1992 was not restored even for the purpose of reckoning the last drawn pay in the matter of fixation of his pensionary benefits. In the result, petitioner had to forego the actual pensionary benefits as would have otherwise been entitled to him had he continued in service. True that because of his retirement he

is not entitled to the second increment. But atleast with respect to increments which fell due on 1.7.1992 is concerned, when the monetary value having been recovered the notional fixation of his last drawn pay reckoning the increment also should have been made. Note 4 under Rule 63 of Part III of Kerala Service rules only says that only emoluments actually received can be shown for calculation for the purpose of working out the average emoluments. The words "actually received" takes in "actually receivable". If the authorities have refused to restore the increment as on the date of retirement then such mistakes cannot be taken advantage of for the purpose of fixation of the average emoluments placing reliance on Note 4 under Rule 63 as above. If the increment which fell due on 1.7.1992 prior to his retirement is not restored it will have a continued effect on the pensionary benefit due to him which cannot be the intention of the authority at the time of inflicting the punishment. If as a matter of fact, the authorities thought it fit to impose a more stringent punishment they would have imposed the punishment of barring increment with cumulative effect. In this case, when the punishment itself was without cumulative effect, the same effect cannot be brought out by denying the notional fixation of the last drawn pay after reckoning the increment which should be deemed as having restored as on the date on which he retired from service.

In the result, the writ petition is allowed. Exts.P2, P4 and P4(a) are upheld as orders correctly passed. The objection contained in Ext.P3 will stand over ruled. There will be a direction to the respondents to pass appropriate consequential orders expeditiously, at any rate, within a period of six months.

P.R. RAMAN,
(JUDGE)

knc/-